

REMARKS/ARGUMENTS

The Applicants originally submitted Claims 1-21 in the application. Through a preliminary amendment and a previous response, the Applicants added Claims 22-32, amended Claims 1-2, 8-9, 15-16, 22 and 24 and canceled Claim 23 without prejudice or disclaimer. Accordingly, Claims 1-22 and 24-32 are currently pending in the application.

I. Comments

The Applicants specifically point out the arguments for dependent Claims 3, 10 and 17 in the following section. The Examiner's Final Action did not address the argument for these claims in the previous response. The Applicants also point out the arguments for dependent Claims 2, 9 and 16 in the following section. The Examiner's Final Action did not address the amendment to these claims in the previous response.

II. Rejection of Claims 1-6, 8-13 and 15-20 under 35 U.S.C. §102

The Examiner has rejected Claims 1-6, 8-13 and 15-20 under 35 U.S.C. §102(e) as being anticipated by US Patent No. 6,141,546 to Thomas, *et al.* (Thomas). The Applicants respectfully disagree.

Thomas is directed to cellular mobile telephone systems and the monitoring and assignment of frequency channels in such systems. (*See* column 1, lines 1-5.) Thomas teaches a mobile cellular telephone that monitors many frequency channels for signal quality and maintains an internal frequency quality list of some of the channels. A suitable frequency is selected from the list for subsequent communication. (*See* column 6, lines 4-20.)

The mobile cellular telephone of Thomas does not include a controller that selects one of the frequency channels to allow the controller to modify a transmission rate of the data as recited in Claims 1, 8 and 15. Instead, a single frequency channel is selected to provide cellular communication with a base station based on signal quality. This is done for the duration of a call or possibly during a call due to unacceptable quality of the call. (See column 9, line 17-24.) Thus, Thomas teaches changing frequencies based on signal quality but the Applicants do not find where Thomas teaches selecting a channel allowing modification of a transmission rate of data as claimed in the present invention.

The Examiner asserts that Thomas inherently modifies a rate in the case of a different channel being selected. (See Examiner's Final Action, page 7.) Simply selecting a different channel, however, does not necessarily imply, (which is the standard for anticipation by inherency) modifying a transmission rate of data. This can be seen in Table 1 on page 15 of the specification where the same transmission rate (*i.e.*, 1.0 Mbps) may be employed with different frequency bandwidths (*i.e.*, 11 and 22 MHz). Thus, selecting another frequency as in Thomas does not necessarily imply modifying a data rate as suggested by the Examiner.

Additionally, the Applicants disagree that "modifying a transmission rate" as recited in independent Claim 1 is simply an intended use. (See Examiner's Final Action, page 7.) On the contrary, the selection system of Claims 1 is configured to select allowing the controller to modify a transmission rate. Thus, the previous amendment further describes the configuration of the selection system, not just an intended use.

Thomas, therefore, does not teach selecting one of at least two channels in accordance with channel information to allow modifying a transmission rate of a signal as recited in independent

Claims 1, 8 and 15. Accordingly, Thomas does not anticipate Claims 1-6, 8-13 and 15-20. Consequently, the Applicants respectfully request the Examiner to withdraw the §102 rejection with respect to Claims 1-6, 8-13 and 15-20 and allow issuance thereof.

Additionally, specifically addressing dependent Claims 2, 9 and 16, the Applicants do not find where Thomas teaches characteristics selected from radio frequency energy associated with a signal on one of the at least two channels and system configuration parameters entered by a user. On the contrary, Thomas appears to only address signal quality. (See column 9, line 17-24.) Thus, Thomas does not teach the additional elements recited in dependent Claims 2, 9 and 16.

Furthermore, specifically addressing dependent Claims 3, 10 and 17, the Applicants do not find where Thomas teaches a wireless local area network. On the contrary, Thomas appears to specifically address cellular communication between mobile cellular telephones and base stations. Thus, Thomas does not teach the additional elements recited in dependent Claims 3, 10 and 17

III. Rejection of Claims 22-24, 28 and 30 under 35 U.S.C. §102

The Examiner has rejected Claims 22-24, 28 and 30 under 35 U.S.C. §102(e) as being anticipated by US Patent No. 6,122,291 to Robinson, *et al.* (Robinson). The Applicants respectfully disagree.

Robinson does not teach transmitting data across a communications network having multiple channels including establishing a bandwidth for transmission of the data and selecting at least one channel from the multiple channels based on a priority status of the data and transmitting the data over the selected as least one channel as recited in Claim 22. On the contrary, Robinson modifies a bandwidth in proportion to a demand on communications resources. (See column 2, lines 1-14.)

Thus, instead of selecting a channel based on priority status of data, Robinson dynamically varies the bandwidth used for data transfer in response to a demand. (See column 7, lines 28-35.)

The Examiner asserts that Robinson teaches determining a priority status and using such to determine bandwidth. (See Examiner's Final Action, page 4.) The priority disclosed in Robinson, however, is priority of terminals, not priority status of transmitted data. (See column 4, lines 24-43.)

Robinson, therefore, does not teach each and every element of independent Claim 22 and Claims dependent thereon. Thus, Robinson does not anticipate Claims 22-24, 28 and 30. Accordingly, the Applicants respectfully request the Examiner to withdraw the §102 rejection with respect to Claims 22- 24, 28 and 30 and allow issuance thereof.

IV. Rejection of Claims 25-27 under 35 U.S.C. §103

The Examiner has rejected Claims 25-27 under 35 U.S.C. §103(a) as being unpatentable over Robinson in view of US Patent No. 6,122,291 to Frodigh, *et al.* (Frodigh). The Applicants respectfully disagree.

As discussed above, Robinson does not teach each and every element of independent Claim 22. Furthermore, Robinson does not suggest each and every element of Claim 22 since Robinson is directed to altering bandwidth to accommodate demands on communication resources. Accordingly, one skilled in the art would not be motivated from the teachings of Robinson to arrive at the present invention.

Frodigh was not cited to cure the deficiencies of Robinson but to teach the subject matter of dependent Claims 25-27. The cited combination of Robinson and Frodigh, therefore, does not teach or suggest each and every element of independent Claim 22 and does not provide a *prima facie* case

of obviousness of Claims 25-27 which depend thereon. Claims 25-27, therefore, are not unpatentable over the cited combination of Robinson in view of Frodigh. Accordingly, the Applicants respectfully request the Examiner withdraw the §103(a) rejection of Claims 25-27 and allow issuance thereof.

V. Rejection of Claim 29 under 35 U.S.C. §103

The Examiner has rejected Claim 29 under 35 U.S.C. §103(a) as being unpatentable over Robinson in view of US Patent No. 6,122,291 to Felix, *et al.* (Felix). The Applicants respectfully disagree.

As discussed above, Robinson does not teach or suggest each and every element of independent Claim 22. Felix was not cited to cure the deficiencies of Robinson but to teach the subject matter of dependent Claim 29. The cited combination of Robinson and Felix, therefore, does not teach or suggest each and every element of independent Claim 22 and does not provide a *prima facie* case of obviousness of Claim 29 which depends thereon. Claim 29, therefore, is not unpatentable over the cited combination of Robinson and Felix. Accordingly, the Applicants respectfully request the Examiner withdraw the §103(a) rejection of Claim 29 and allow issuance thereof.

VI. Rejection of Claims 31-32 under 35 U.S.C. §103

The Examiner has rejected Claims 31-32 under 35 U.S.C. §103(a) as being unpatentable over Thomas and in further view of Robinson. The Applicants respectfully disagree.

As stated by the Examiner, Thomas fails to disclose modifying a transmission rate based on a priority status of data as recited in Claims 31-32. The Examiner cites Robinson to cure this deficiency. As argued above with respect to independent Claim 22, Robinson also does not teach modifying a transmission rate based on a priority status of data but instead teaches dynamic allocation of available bandwidth regarding the priority of terminals. (See column 4, lines 24-43.)

The cited combination of Thomas and Robinson, therefore, does not teach or suggest each and every element of dependent Claims 31-32 and does not provide a *prima facie* case of obviousness thereof. Claims 31-32, therefore, are not unpatentable over the cited combination of Thomas and Robinson. Accordingly, the Applicants respectfully request the Examiner withdraw the §103(a) rejection of Claims 31-32 and allow issuance thereof.

VII. Rejection of Claims 7, 14 and 21 under 35 U.S.C. §103

The Examiner has rejected Claims 7, 14 and 21 under 35 U.S.C. §103(a) as being unpatentable over Thomas. The Applicants respectfully disagree.

As discussed above, Thomas does not teach each and every element of independent Claims 1, 8 and 15. Furthermore, Thomas does not suggest each and every element of Claims 1, 8 and 15 since Thomas provides no suggestion of modifying a transmission data rate but instead is directed to improving system quality and capacity in a mobile cellular communications system. Accordingly, one skilled in the art would not be motivated from the teachings of Thomas to arrive at the present invention.

Thomas, therefore, does not teach or suggest each and every element of independent Claims 1, 8 and 15 and does not provide a *prima facie* case of obviousness of Claims 7, 14 and 21 which

depend thereon. Claims 7, 14 and 21, therefore, are not unpatentable over Thomas. Accordingly, the Applicants respectfully request the Examiner withdraw the §103(a) rejection of Claims 7, 14 and 21 and allow issuance thereof.

VIII. Conclusion

In view of the foregoing remarks, the Applicants now see all of the Claims currently pending in this application to be in condition for allowance and therefore earnestly solicit a Notice of Allowance for Claims 1-22, 24-32.

The Applicants request the Examiner to telephone the undersigned attorney of record at (972) 480-8800 if such would further or expedite the prosecution of the present application.

Respectfully submitted,

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FROM: J. Joel Justiss

RE: Serial No.: 09/813,424
Attorney Docket No.: BLAIR 3-5-5-3
REQUEST FOR RECONSIDERATION UNDER 37 C.F.R. § 1.116

DATE: October 8, 2004

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